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9 **UNITED STATES BANKRUPTCY COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**  
11 **NORTHERN DIVISION**

12 In re  
13 HVI CAT CANYON, INC.,  
14 Debtor.

Case No. 9:19-bk-11573-MB

Chapter 11

**TRUSTEE'S SUPPLEMENTAL BRIEF IN  
SUPPORT OF MOTION TO EXPUNGE:  
(1) NOTICE OF OIL AND GAS LIEN  
FILED BY CALIFORNIA ASPHALT  
PRODUCTION, INC. (DOCKET NO. 821);  
(2) NOTICE OF OIL AND GAS LIEN  
FILED BY GTL1, LLC (DOCKET NO.  
822); AND (3) NOTICE OF OIL AND GAS  
LIEN FILED BY GIT, INC. (DOCKET  
NO. 823)**

Date: May 19, 2020  
Time: 10:30 a.m.  
Place: Courtroom 201  
1415 State Street  
Santa Barbara, CA 93101

22  
23 Michael A. McConnell, the Chapter 11 trustee (the "Trustee") for the estate of HVI Cat  
24 Canyon, Inc. (the "Debtor"), hereby submits his supplemental brief in support of the Motion to  
25 Expunge: (1) Notice of Oil and Gas Lien Filed by California Asphalt Production, Inc.; (2) Notice of  
26 Oil and Gas Lien Filed by GTL1, LLC; and (3) Notice of Oil and Gas Lien Filed by GIT, Inc.

1 (*docket no. 875*) (the “Motion to Expunge”).<sup>1</sup> At the initial hearing on the Motion to Expunge held  
2 on April 17, 2020, the Court requested further briefing on the matter. The Court directed the  
3 parties to file supplemental briefing by May 8, 2020 regarding the comments made at the hearing –  
4 which dealt with whether the Oil and Gas Notices relate back to interests which arose pre-petition  
5 under the California Oil and Gas Lien Act (the “Act”).

6 As a threshold issue, CAP, GTL1 and GIT acknowledge and admit in their Oil and Gas  
7 Notices that under the Act, their liens “relate back to the ‘date of the furnishing of the first item of  
8 material or services or the date of performance of the first labor for which [the] lien is claimed.’  
9 Cal. Civ. Proc. Code § 1203.56. Here, that date is August 2019.”<sup>2</sup> Now, in direct contradiction of  
10 both the position taken in their underlying notices and the language of the statute itself – CAP,  
11 GTL1 and GIT posit that the cited statute instead provides for a relation back to the beginning of  
12 the original contractual relationship between the entities. For the reasons stated in the Reply  
13 Memorandum of Points and Authorities in support of the Motion to Expunge (*docket no. 920*) (the  
14 “Reply”), the Oil and Gas Notices cannot relate back to any pre-petition interests in property. To  
15 summarize the Trustee’s arguments:

16 1. Perfection under Bankruptcy Code Section 546(b) must relate back to a prepetition  
17 period. 6 *Collier on Bankruptcy* ¶ 546.03[2][c][i] (Richard Levin & Henry J. Sommer eds., 16th  
18 ed.) (*citing* 11 U.S.C. §§ 544(a), 545(2); H.R. Rep. No. 595, 95th Cong., 1st Sess. 371 (1977),  
19 *reprinted in* App. Pt. 4(d)(i) *infra* (stating applicable law must relate back to prepetition period);  
20 *Makoroff v. City of Lockport, N.Y.*, 916 F.2d 890 (3d Cir. 1990); *In re Parr Meadows Racing Ass’n,*  
21 *Inc.*, 880 F.2d 1540 (2d Cir. 1989).

22 The paradigm Section 546(b) case would arise in a state which has adopted the U.C.C. –  
23 “[u]nder various sections of the U.C.C., a perfected security interest relates back to either the filing  
24 of a financing statement or the date that the security interest attaches.” *Makoroff*, 916 F.2d at 892.

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26 <sup>1</sup> Defined terms are the same as in the Motion to Expunge.

27 <sup>2</sup> CAP Oil and Gas Notice, p. 2, l. 16-18; GTL1 Oil and Gas Notice, p. 2, l. 16-18; and GIT Oil and  
28 Gas Notice, p. 2, l. 15-17.

1 Where a state law allows a creditor to perfect his security interest within a certain period of  
2 time after the security interest attaches, section 546(b) allows the creditor to complete the  
steps required under state law for perfection.

3 *Id.*

4 Here, unlike a secured creditor whose interest is perfected by filing a financing statement  
5 and his priority relates back to the date when his security interest attached, CAP, GTL1 and GIT  
6 cannot rely on the Section 546(b) notice requirement post-petition to maintain perfection of any oil  
7 and gas liens under the Act because no interests were ever created in the Debtor's property under  
8 the Act pre-petition.

9 In *Makoroff*, the Third Circuit determined that the claimants did not have property interests  
10 for purposes of Section 546(b) because they did not take the “affirmative acts necessary to fix the  
11 amount of the tax due and to acquire a lien to the extent of that amount” prior to the petition date.  
12 The Third Circuit noted that “city taxes do not become a lien until notice of a tax assessment has  
13 been published.” Similarly under the Act, a lien is only created upon recordation of the statement  
14 of lien. Cal. Civ. Proc. Code §§ 1203.56, 1203.58. In lieu of recording the statements of liens,  
15 CAP, GTL1 and GIT filed the Oil and Gas Notices in February 2020, post-petition in the  
16 bankruptcy case. Such affirmative acts are clearly post-petition. The Oil and Gas Notices were  
17 also explicitly for post-petition services. Therefore, CAP, GTL1 and GIT did not acquire the  
18 requisite interests in property pre-petition to utilize Section 546(b).

19 2. CAP, GTL1 and GIT's argument that their purported liens “relate back” to the  
20 beginning of their contractual relationship with the Debtor is not only in direct contradiction to  
21 their Oil and Gas Notices, but also meritless. The text of the Act and the Central District of  
22 California Bankruptcy Court decision interpreting the Act leave no doubt that the lien for labor  
23 performed, or materials or services furnished arises on the date for which a lien is claimed – and the  
24 deadline to claim a lien is six months after the claimant's labor was performed or services were  
25 provided. Cal. Civ. Proc. Code §§ 1203.56, 1203.58; *In re Rincon Island Ltd. P'ship*, 253 B.R.  
26 880, 883 (Bankr. C.D. Cal. 2000) (“[r]ecordation must occur within six months after the date on  
27 which the claimant's labor was performed or services were provided.”)  
28

1 Specifically, a lien under the Act arises on the first date of the period for which the lien is  
2 claimed for:

3 The lien provided for in this chapter arises on the date of the furnishing of the first item of  
4 material or services or the date of performance of the first labor for which a lien is claimed  
under the provisions of this chapter.

5 Cal. Civ. Proc. Code § 1203.56.

6 The Act does not say that the lien arises on the first day of the contract between the parties.  
7 Rather, as set forth above, the lien only arises, for priority purposes, on the date of the furnishing of  
8 the first item of material or services or performance for which a lien is claimed under the Act. Cal.  
9 Civ. Proc. Code § 1203.56. However, there is also only a right to claim a lien under the Act for the  
10 labor performed and materials and services furnished within the six months prior to recording the  
11 statement of lien. Cal. Civ. Proc. Code § 1203.52. The Act is unequivocal that its purpose is to  
12 provide a lien for labor performed, or materials or services furnished, within six months prior to the  
13 date of recording the statement of lien. Section § 1203.52 of the Act specifically provides that:

14 [a]ny person who shall, under contract with the owner of any leasehold for oil or gas  
15 purposes perform any labor or furnish any material or services used or employed, or  
16 furnished to be used or employed in the drilling or operating of any oil or gas well upon  
17 such leasehold, or in the constructing, putting together, or repairing of any material so used  
18 or employed, or furnished to be so used or employed, shall be entitled to a lien under this  
19 chapter, whether or not a producing well is obtained and whether or not such material is  
incorporated in or becomes a part of the completed oil or gas well, for the amount due him  
for any such labor performed, or materials or services furnished, within six months prior to  
the date of recording the statement of lien as provided in Section 1203.58, including,  
without limitation, shipping and mileage charges connected therewith, and interest from the  
date the same was due.

20 Cal. Civ. Proc. Code § 1203.52.

21 Recording the statement of lien is required in order to claim a lien under the Act. In doing  
22 so, the period of time for which one's claim for labor performed and materials and services  
23 provided is only for the six months prior to recording the statement of lien:

24 Every person claiming a lien under this chapter, shall record ... a verified statement... [t]he  
25 statement of lien must be recorded within six months after the date on which the claimant's  
labor was performed or his materials or services were furnished to be effective as to such  
26 labor, materials, or services.

27 Cal. Civ. Proc. Code § 1203.58.  
28

1 In sum, nowhere in the text of the Act does it provide for relation back outside the six-  
2 month period of recording the statement of lien to the first date work was ever performed or  
3 materials ever provided. Instead, the Act is unambiguous that the attachment and filing of the  
4 statement of lien is simultaneous, such that at the time the statement of lien is recorded, the  
5 maximum period that the lien can cover is up to six months. The Oil and Gas Notices were filed in  
6 February 2020 to cover a period beginning in August 2019. Accordingly, the Oil and Gas Notices  
7 cannot relate back to the beginning of any contractual relationship between the parties – and instead  
8 only relate back to the date on which the liens are claimed for, or August 2019.

9  
10 Therefore, as set forth in the Motion to Expunge and the Reply, without a pre-petition  
11 interest in property, CAP, GTL1 and GIT cannot utilize the automatic stay exception in Section  
12 546(b), and the Motion to Expunge should be granted.

13  
14 DATED: May 8, 2020

DANNING, GILL, ISRAEL & KRASNOFF, LLP

15  
16 By: /s/ Sonia Singh

17 SONIA SINGH

18 Attorneys for Michael A. McConnell, Chapter 11  
19 Trustee  
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## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 1901 Avenue of the Stars, Suite 450, Los Angeles, CA 90067-6006.

A true and correct copy of the foregoing document entitled (*specify*): TRUSTEE'S SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION TO EXPUNGE: (1) NOTICE OF OIL AND GAS LIEN FILED BY CALIFORNIA ASPHALT PRODUCTION, INC. (DOCKET NO. 821); (2) NOTICE OF OIL AND GAS LIEN FILED BY GTL1, LLC (DOCKET NO. 822); AND (3) NOTICE OF OIL AND GAS LIEN FILED BY GIT, INC. (DOCKET NO. 823) will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) May 8, 2020 I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page.

**2. SERVED BY UNITED STATES MAIL:**

On (*date*) May 8, 2020, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page.

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) \_\_\_\_\_, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

May 8, 2020  
\_\_\_\_\_  
*Date*

Gloria Ramos  
\_\_\_\_\_  
*Printed Name*

/S/ Gloria Ramos  
\_\_\_\_\_  
*Signature*

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